

No. 4:15-CV-7-F

Defendants.

## ORDER

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applied for a corporate credit card account (the “Account”) with Chase. *Id.* ¶ 9; *see also* Exhibit A to the Complaint [DE-1-1] at 13. She signed the application as a representative of OBI. Compl. [DE-1-1] ¶ 10; *see also* Ex. A Compl. [DE-1-1] at 14. The Account was used only by OBI employees and only for OBI business-related expenses. *See* Compl. [DE-1-1] ¶ 13.

On October 22, 2013, Asby resigned from OBI. *Id.* ¶ 14. Shortly thereafter, Asby “notified Chase that she no longer worked for OBI and requested that Chase remove her as the Authorizing Officer on the Account.” *Id.* ¶ 17. Chase instead began sending statements and notices related to the Account to Asby’s personal address. *Id.* ¶ 18. Chase also sent Asby a “Change of Authorizing Officer” form, which Asby forwarded to OBI. *Id.* ¶ 19. OBI completed the form and returned it to Chase. *Id.* ¶ 20. However, Chase denied Asby’s request to approve a new Authorizing Officer, and OBI never resubmitted a new “Change of Authorizing Officer” form. *See id.* ¶¶ 22, 27-28. As a result of the failure to change the Authorizing Officer on the Account, Chase reported the OBI Account debt as Asby’s own personal debt to at least two credit reporting agencies. *See id.* ¶ 29. Asby’s credit suffered as a result. *Id.* ¶ 30.

In June of 2014, Chase began attempting to settle the debt on the Account with Asby. *See id.* ¶ 31. Asby has personally made at least two payments on the Account. *See id.* ¶ 32. This pattern continued up until around the time suit was filed. *See id.* ¶¶ 33-39. As a result of Chase and OBI’s actions, Asby has also allegedly suffered severe emotional distress, manifesting itself in the form of insomnia and vomiting. *See id.* ¶ 41.

Asby has brought several state claims against Chase and OBI as well as one claim of violating the Fair Credit Reporting Act (“FCRA”) as to Chase. *See generally id.* ¶¶ 42-64. Both defendants have moved to dismiss all claims against them.

## II. LEGAL STANDARD

The purpose of a motion to dismiss under Rule 12(b)(6) is to test the legal sufficiency of the complaint, not to resolve conflicts of fact or to decide the merits of the action. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999). In considering a motion to dismiss, the court assumes the truth of all facts alleged in the complaint and the existence of any fact that can be proved, consistent with the complaint's allegations. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P' ship*, 213 F.3d 175, 180 (4th Cir. 2000). However, the “ ‘[f]actual allegations must be enough to raise a right to relief above the speculative level’ and have ‘ enough facts to state a claim to relief that is plausible on its face.’ ” *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 615 n.26 (4th Cir. 2009) (alteration in original) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). “[A] plaintiff's obligation to provide the ‘ground’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.” *Twombly*, 550 U.S. at 555 (second alteration in original). Moreover, a court “need not accept the legal conclusions drawn from the facts” nor “accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *E. Shore Mkts.*, 213 F.3d at 180. The court may consider “documents incorporated into the complaint by reference” when deciding a Rule 12(b)(6) motion. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

## III. DISCUSSION

### **a. There is no private right of action for Asby's FCRA claim.**

Simply put, there is no private right of action for violating 15 U.S.C. § 1681s-2, which is the applicable statute in the present case. *See Campbell v. Wells Fargo Bank, N.A.*, 73 F. Supp. 3d 644, 651 (E.D.N.C. 2014) (holding that there is no private right of action under 15 U.S.C.

§ 1681s-2 and collecting cases holding the same). All of Asby's FCRA claims relate to Chase as a "furnisher of information" and how Chase furnished inaccurate information "to consumer credit reporting agencies." See Complaint [DE-1-1] ¶¶ 51-53. She does not have a private right of action to bring suit under the FCRA. Thus, her Second Cause of Action must be DISMISSED. Chase's Motion to Dismiss [DE-5] is ALLOWED IN PART as to Asby's FCRA claim.

**b. The court has dismissed the sole claim over which it had original jurisdiction and declines to exercise supplemental jurisdiction over the remaining claims.**

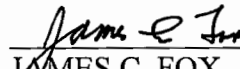
This action was removed pursuant to federal question jurisdiction under 28 U.S.C. § 1331. See Notice of Removal [DE-1]. Because the sole federal question in this matter has been dismissed, this court may decline to exercise supplement jurisdiction under 28 U.S.C. § 1367. The court so declines. Except as allowed herein, Chase's Motion to Dismiss [DE-5] is DISMISSED AS MOOT. OBI's Motion to Dismiss [DE-10] is further DISMISSED AS MOOT.

**IV. CONCLUSION**

For the foregoing reasons, Chase's Motion to Dismiss [DE-5] is ALLOWED IN PART and DISMISSED IN PART as moot. OBI's Motion to Dismiss [DE-10] is DISMISSED AS MOOT. This matter is REMANDED to Beaufort County Superior Court, Washington, North Carolina. The Clerk of Court is DIRECTED to close this case.

SO ORDERED.

This, the 21<sup>st</sup> day of August, 2015.

  
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JAMES C. FOX  
Senior United States District Judge